enable the plaintiff to retain the sum of $3,000 which he received as a deposit from the defendants. All I am disposed to award the plaintiff now, therefore, is the sum of $905.50, being the amount of the expenses incurred in respect of the second auction and he will accordingly receive this sum by way of damages, together with costs on the lower scale. It follows that the defendants' counterclaim is also dismissed with costs on the same scale.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Chung & Co.*

In the matter of CARGO HANDLING CORPORATION LTD. v. CARGO HANDLING CORPORATION STAFF UNION

[O.C.J. (Gill J.) June 17, 1966]

[K.L. — Originating Summons No. 231 of 1965]

Administrative Law — Prohibition — Industrial Arbitration Tribunal — Industrial dispute settled — Whether tribunal to take cognizance.

Essential (Trade Disputes in Essential Services) Regulations, 1965 — Meaning of trade dispute — Application for prohibition against the Industrial Arbitration Tribunal.

Industrial Dispute — Dismissal of union members — Settlement between employers and union — Whether tribunal to take cognizance of settlement.

This was a motion to prohibit the Industrial Arbitration Tribunal from continuing to hear a trade dispute between the Cargo Handling Corporation Ltd. and the Cargo Handling Corporation Staff Union. The union had made representations to the employers against the dismissal of eight supervisors and demanded their reinstatement; and they eventually reported the matter to the Minister of Labour. Attempts at conciliation failed and the Minister referred the dispute to the Industrial Arbitration Tribunal, by letter in which he stated that the dispute was between the Cargo Handling Corporation Ltd., Port Swettenham and the Cargo Handling Corporation Staff Union, that the dispute was over the dismissal of eight named supervisors and the union's claim for their reinstatement and that it was being referred to the tribunal under regulation 4(4) of the Essential (Arbitration in the Essential Services) Regulations, 1965, for settlement in accordance with the regulations. The dispute was heard by the tribunal but while the hearing was still in progress the employers and the union reached a settlement. The terms of settlement were read out to the tribunal and it was asked to take cognizance of the agreement. The employers submitted that since the dispute no longer existed there was nothing further for the tribunal to determine. The tribunal however gave a ruling that the parties to the trade dispute before it were the employers on the one side and the eight supervisors on the other. The employers applied for an order to prohibit the tribunal from continuing to hear the dispute.

Held: (1) from a reading of the regulations as a whole it would appear that a dispute in respect of employment or non employment or terms of employment of an individual workman cannot come within the definition of "trade dispute" unless the cause of such individual workman has been espoused by a number of other workmen or a union of workmen;

(2) the dispute in the present case was between the employers and the union and as they had come to a settlement, the tribunal had no option but to take cognizance of it.

Cases referred to:—

(1) *R.* v. *National Arbitration Tribunal, ex parte Horatio Crowther & Co. Ltd.* [1947] 2 All E.R. 693.

(2) *Lakshmi Talkies* v. *Munnaswami* [1955] 2 L.L.J. 477.

(3) *R.* v. *National Arbitration Tribunal, ex parte South Shields Corporation* [1952] 1 K.B. 46, 53.

(4) *R.* v. *Industrial Disputes Tribunal, ex parte Queen Mary College, University of London* [1957] 2 All E.R. 776.

(5) *National Association of Local Government Officers* v. *Bolton Corporation* [1943] A.C. 166, 189.

ORIGINATING SUMMONS.

J. J. Puthucheary for the applicants.

Au Ah Wah (Federal Counsel) for the Minister and Chairman, Industrial Arbitration Tribunal.

R. Ponnudurai for two of the supervisors.

Cur. Adv. Vult.

Gill J.: This is a motion for an order to prohibit the Industrial Arbitration Tribunal from continuing to hear a trade dispute between the Cargo Handling Corporation Ltd. (the applicants to these proceedings) and the Cargo Handling Corporation Staff Union, which was referred to the tribunal by the Minister of Labour.

The dispute in question arose over the termination by the Cargo Handling Corporation hereinafter referred to as "the employers") of the services of eight of their labour supervisors between 2nd April and 28th May, 1965. The Cargo Handling Corporation Staff Union (hereinafter referred to as "the union") made representations to the employers against the dismissal of the eight supervisors and demanded their reinstatement. Some discussions took place, but they did not lead to a settlement.

The union reported the matter to the Minister of Labour on 22nd July, 1965. By his letter dated the 24th July, 1965 the Minister of Labour informed the employers that the union had reported under the Essential (Arbitration in the Essential Services) Regulations, 1965, the existence of a trade dispute with them. After attempts at conciliation had failed, the Minister by his letter dated 11th August, 1965 referred the dispute to the Industrial Arbitration Tribunal. It was stated in that letter that the dispute was "between the Cargo Handling Corporation Ltd., Port Swettenham and the Cargo Handling Corporation Staff Union", that the

dispute was over the dismissal of eight named supervisors and the union's claim for their reinstatement, and that it was being referred to the tribunal under regulation 4(4) of the Essential (Arbitration in the Essential Services) Regulations, 1965, for settlement in accordance with the regulations.

A hearing of the dispute before the tribunal began on the 27th of September, 1965. On 5th October, 1965, whilst the hearing was still in progress, the employers and the union reached a settlement. When the tribunal sat on 6th October, 1965 an agreement embodying the terms of settlement was read out to the tribunal and the tribunal was asked to take cognizance of the agreement under the regulations. It was submitted by the employers that since the dispute no longer existed there was nothing further for the tribunal to determine.

On 8th October, 1965 the tribunal gave a ruling that the parties to the trade dispute before it were the employers on one side and the eight workmen on the other. At the continued hearing by the tribunal on 11th October, 1965 an objection was made to such continued hearing. On 12th October, 1965 the tribunal ruled that the word "workmen" in their ruling of 8th October, 1965 meant the eight supervisors whose names were communicated to them by the Minister. On the same day the union withdrew from the proceedings on the ground that they no longer had any dispute with the employers, such dispute having been settled. Five of the supervisors at that stage had informed the tribunal that they accepted the settlement.

The tribunal adjourned the matter and intimated that it would continue its hearing on a later date. These proceedings have been brought to prohibit the tribunal from any further hearing of the dispute.

It is to be observed that the Essential (Arbitration in the Essential Services) Regulations, 1965 (L.N. 198 of 1965) under which the dispute was referred to the tribunal were repealed by regulation 17 of the Essential (Trade Disputes in the Essential Services) Regulations, 1965 (L.N. 355 of 1965), the proviso to which reads as follows:

> "Provided that all acts commenced or done under the regulations hereby repealed shall have effect for all purposes as if such acts had been commenced or done under the provisions of these regulations and as if these regulations had then been in force."

As the new regulations came into force on 23rd September, 1965 and as the dispute had not been heard by the tribunal before that date, the position must be regulated by the new and not the old regulations.

Under regulation 2 of the new regulations a "trade dispute" is defined to mean "any dispute between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person", and the word "workman" means "any person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship, or a contract personally to execute any work, and whether or not the employment of the employer with whom the trade dispute arises."

It was argued on behalf of the applicants that the eight workmen over whose dismissal the trade dispute in the present case arose could not be regarded as parties to the dispute as they no longer had a contract of employment. Quite apart from the question as to whether such dismissed workers could be regarded as being parties to the dispute, there is ample authority that if a number of workmen are dismissed by proper notice or summarily for cause, the fact that they are no longer in employment or have broken their contracts does not prevent a dispute between them and their former employer from being a trade dispute (see *R.* v. *National Arbitration Tribunal, Ex-parte Horatio Crowther & Co., Ltd.*[1]). In any event, in the present case the question of reinstatement raised by the union is clearly covered by the expression "dispute connected with the non-employment of any person".

The object of the regulations clearly is to maintain industrial peace by investigation and settlement of trade disputes. From a reading of the regulations as a whole it would appear that a dispute in respect of employment or non-employment or terms of employment or conditions of labour of an individual workman cannot come within the definition of "trade dispute", unless the cause of such individual workman has been espoused by a number of other workmen or a union of workmen. In the Indian case of *Lakshmi Talkies* v. *Munnuswami*[2] Balkrishna Ayyar J. during the course of his judgment summed up this position as follows:

> "If a particular employer fines or otherwise punishes a particular workman, say for carelessness, or dismisses him for theft or for damage to property, the workman concerned might feel that he had been wrongly dealt with, but that would be only an individual dispute between him and his employer and it would not be an industrial dispute within the meaning of section 2(k) of the Act, as the definition would cover cases only where there is a dispute between the employers and workers generally. But if the employees or a substantial section of them, though not necessarily the majority of them, espouse the cause of the workman and insist on the penalty imposed on him being set aside, or on his being re-instated, then whatever their reasons for this step, if they make his cause their own, it would cease to be an individual dispute and would become an industrial dispute within

the meaning of section 2(k) of the Act."

His Lordship was in that case dealing with the definition of "industrial dispute" contained in section 2(k) of the Industrial Disputes Act, 1947, the terms of which are identical with the definition of "trade dispute" in regulation 2 of our Essential (Trade Disputes in Essential Services) Regulations, 1965.

In *Rex* v. *National Arbitration Tribunal, ex-parte South Shields Corporation* [3] the court was concerned with the interpretation of article 12(1) of the Industrial Disputes Order, 1951 which defines "dispute" as meaning "any dispute between an employer and workmen in the employment of that employer connected with the terms of employment or with the conditions of labour of any those workmen." Lord Goddard C.J. in the course of his judgment in that case said:

"When therefore, we find in the definition of a dispute that it means a dispute between an employer in the singular and workmen in the plural, it seems to us to be clear that the order is not contemplating the reference of a dispute which may arise between an employer and a single workman employed by him in connexion with the terms of his employment, but is concerned with workmen as a class or body. The order of 1951 is in our view intended to cover disputes which affect either all the workmen in the service of an employer or a particular section of workmen in his employment."

Further down in the same judgment His Lordship had this to say:

"It was also argued for the town clerk that, if effect were given to the corporation's contention, it would mean that, whereas the dispute could not be referred if he alone were a party, if, for instance the deputy town clerk joined with him, the matter would be in order, and that would be an absurd result. As neither the deputy town clerk nor anyone else has become a party to the dispute, this point is really immaterial, but we must not be taken to be assenting to that proposition. It may well be that this definition is contemplating all along a class of workmen, and industrial disputes do arise because a large number of class of workmen support a particular workman who may be dismissed or downgraded by the employer, or sometimes because some particular workman is promoted and in the opinion of the body of workmen someone ought to have been preferred in his place; and it may be said that it is such matters as that that the order is contemplating in its definition of dispute. That point we need not decide. What we do decide is that there must be a dispute between an employer and more than one workman in his employ, though it may be that the dispute originates with a single workman, and that the others only become parties to the dispute in support of one member of their body."

In *R.* v. *Industrial Disputes Tribunal, ex-parte Queen Mary College, University of London* [4] it was held that there was a dispute between "workmen" and their employer within the definition of "dispute" in article 12(1) of the Industrial Disputes Order, 1951, because the body of workmen, members of the union, had taken up the dispute and, although the dispute referred to the tribunal related to the upgrading of only one workman, yet it was a dispute "connected with . . . the conditions of labour of any of those workmen" within article 12(1). Devlin J. said in that case at page 780:

"In short, the proposition for which counsel for the Minister contends really comes down to this: If the union chooses to make the matter a union issue, if it chooses to take up the cudgels on behalf of its member and thereby to become belligerent in the matter, it is a dispute to which more than one workman is a party. No doubt, the union will not do it unless there is a matter of some general principle involved; but if the union chooses to make it a general issue, it becomes a dispute to which the whole body of workmen or group are made parties. We think that is the right view of the matter, and, indeed — although I shall have to consider the terms of the order and the submissions of counsel for the applicants — we think that it is implicit so far as the authorities go, particularly *R.* v. *National Arbitration Tribunal, Ex p. South Shields, Corpn.*,[3] on which counsel for the applicants relied for his general proposition."

Thus it is clear from the authorities that the true nature of a trade dispute is that it is a collective dispute in the sense that on the one side at least of the dispute the disputants are a body of men acting collectively and not individually. The character of the dispute is governed by the demanding group and not by the beneficiary group. It therefore follows that the real party to the dispute on the workmen's side is this demanding group which is represented by their trade union. The tribunal in the present case construed the words of regulation 4(1)(b) to mean that the dispute was one between the employers and the eight dismissed workmen and not the employers and the union. There was a similar contention in the case of *National Association of Local Government Officers* v. *Bolton Corporation.*[5] Lord Wright said in that case:

"It would be strangely out of date to hold, as was argued, that a trade union cannot act on behalf of its members in a trade dispute, or that a difference between a trade union acting for its members and their employer cannot be a trade dispute."

By regulation 4(1) the dispute can only be reported to the Minister by

"(a) an employer who is a party to the dispute or a trade union of employers representing him in the dispute; or (b) a trade union of workmen representing workmen who are parties to the dispute".

Regulation 4(2) provides that

"such report to the Minister shall clearly state the names of the parties to the dispute and the specific matters in dispute".

Quite clearly the regulations are intended to cover disputes which might arise between employers and a body of workmen which, if not settled, might lead to interruption of work by strikes or lock-outs. The dispute which is reported under regulation 4(1)(b) is a dispute which is taken up by the union. There is no provision in the regulations which makes it possible for a report to be made by a workman or workmen unless their cause is espoused by a

union, that is, unless the union becomes a party to the dispute. The word "workmen" in regulation 4(1)(b), therefore, means the workmen who have taken up the dispute through their union. It means the totality of the union membership or the workmen as a class or body who have agreed to take up the cudgels on behalf of the aggrieved workmen and not merely the eight individual workmen.

As I have stated above, the regulations require a report to state the names of the parties to the dispute. This was done when the union wrote to the Minister informing him of the existence of a trade dispute between them and the applicants over the dismissal of eight workers. In the letter which he addressed to the tribunal the Minister stated quite clearly that the dispute was between the Cargo Handling Corporation Ltd., Port Swettenham and the Cargo Handling Corporation Staff Union.

The Industrial Arbitration Tribunal is a statutory arbitrator having the usual powers of arbitrators except in so far as those powers have been increased or cut down by the regulations under which it is constituted. It is not an industrial court with jurisdiction to entertain proceedings brought before it by the parties. It can only arbitrate on such trade disputes as are referred to it by the Minister, and these trade disputes in turn are such trade disputes as have been reported to the Minister under the regulations. It has no power to amend or alter the terms of reference in relation to the nature of and the parties to the dispute referred to it under the regulations. It is constituted for the purpose of settling disputes that cannot otherwise be determined. Regulation 10 provides that it shall take cognizance of any agreement in settlement of a trade dispute which has been reported to the Minister under regulation 4, or in relation to which the Minister has commenced action under regulation 6. There is no provision in the regulations requiring the consent and approval of the tribunal in relation to an agreement reached in settlement of a trade dispute which has been referred to it.

It was contended on behalf of the workmen who did not agree to the settlement that once a trade dispute is referred to the tribunal the fact that subsequently, due to some reason, the union decides to dissociate itself from the cause of the workmen does not convert the trade dispute into an individual dispute. There is some authority for this proposition, but in the present case the union was not dissociating itself from the cause of the workmen but merely taking the stand that the dispute had in fact been settled between the parties.

For the reasons stated I have come to the conclusion that the dispute in the present case was between the employers and the union. The union in reaching a settlement with the employers did so on behalf of the workmen whom they represented. Once this settlement was reached, the tribunal had no option but to take cognizance of it. There will therefore be an order of prohibition as prayed. I shall hear arguments on the question of costs on a later date.

Prohibition order granted.

Solicitors. *Skrine & Co.; Rajendra & Teik Ee.*

HENRY TRADING CO. LTD. v. HARUN

[F.C. (Barakbah L.P., Abdul Aziz and Wan Suleiman JJ.) June 19, 1966]

Negligence — Road accident — Contributory negligence — Civil Law Ordinance, 1956, s. 12.

Practice and Procedure — Agreed bundle of documents — Proof.

This was an appeal against the decision of the High Court which had dismissed a claim for damages to a Land Rover arising from a road accident as it was held that both sides were equally negligent. The evidence of the police sergeant indicated that the appellant's Land Rover was on its correct side of the road. The trial judge had held that the doctrine of contributory negligence was not applicable.

Held: (1) on the evidence of the independent witness, the police sergeant, the respondent was the negligent party and therefore the appeal must be allowed;

(2) the doctrine of contributory negligence was applicable by virtue of section 12 of the Civil Law Ordinance, 1956.

Semble: Where there is an agreed bundle of documents it is not necessary to prove those documents.

FEDERAL COURT.

C. O. Lim for the appellant.

H. L. Wrigglesworth for the respondent.

Wan Suleiman J. (delivering oral judgment): This is an appeal against the decision of the late Mr. Justice Hashim in which he dismissed the claim by the plaintiff/respondent. The defendant/appellant appealed.

The brief facts of the case are that on the night of the 1st December 1962 the plaintiff/respondent was returning home to Pasir Mas from Kota Bharu on the Kota Bharu/Pasir Mas road when at the 10½ milestone, an oncoming Land Rover driven by an employee of the appellant/defendant knocked into the front bumper of the car being driven by the plaintiff/respondent. There were, as is often to be expected in cases of this sort, two varying accounts of what actually happened and, in deciding what the truth of the matter was, I feel that the proper thing to consider is not so much what the plaintiff/respondent said or what the defendant/